

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

BASIL G. ANDREW,

Plaintiff,

v.

JOHN DOE, *et al.*,

Defendants.

Case No. 3:22-cv-00071-SLG-KFR

**ORDER RE REPORT AND RECOMMENDATION TO DISMISS FOR FAILURE
TO PROSECUTE**

On September 21, 2022, Magistrate Judge Kyle F. Reardon issued a *Screening Order* in this matter dismissing the complaint without prejudice for failing to state a claim upon which relief may be granted.¹ Judge Reardon's order also deferred the Application to Waive Prepayment of the Filing Fee and required that Plaintiff Andrew file an amended complaint or a notice of voluntary dismissal no later than October 28, 2022, or this case could be dismissed with prejudice and that this dismissal would constitute a strike to Plaintiff as required by 28 U.S.C. § 1915(g) and *Lomax v. Ortiz-Marquez, et al.* 590 U.S. ___, 140 S.Ct. 172 (2020).²

¹ Docket 9.

² 28 U.S.C. § 1915(g) prohibits a prisoner who has filed more than three actions or appeals in any federal court in the United States that are dismissed as frivolous or malicious or for failure to state a claim upon which relief may be granted, from bringing any other actions without prepayment of fees unless the prisoner can demonstrate that he or she is in "immediate danger of serious physical injury."

Mr. Andrew did not file a response to Judge Reardon's order. On November 15, 2022, Judge Reardon issued a *Report and Recommendation* in which he recommended that this case be dismissed without prejudice and that this dismissal should constitute a strike to Plaintiff. No objections to the *Report and Recommendation* were filed.

The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1). That statute provides that a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge."³ A court is to "make a de novo determination of those portions of the magistrate judge's report or specified proposed findings or recommendations to which objection is made."⁴ However, § 636(b)(1) does not "require district court review of a magistrate's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings."⁵

The Court has reviewed the *Report and Recommendation* and agrees with its analysis. Accordingly, the Court adopts the *Report and Recommendation* in its entirety, and IT IS ORDERED that this action is DISMISSED WITHOUT PREJUDICE. The application to waive prepayment of the filing fee is DENIED AS

³ 28 U.S.C. § 636(b)(1).

⁴ *Id.*

⁵ *Thomas v. Arn*, 474 U.S. 140, 150 (1985); see also *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

MOOT. This dismissal shall be a STRIKE as required by 28 U.S.C. § 1915(g) and *Lomax v. Ortiz-Marquez, et al.* 590 U.S. ___, 140 S.Ct. 172 (2020).

DATED this 16th day of December, 2022, at Anchorage, Alaska.

/s/ Sharon L. Gleason

UNITED STATES DISTRICT JUDGE